IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

THURSDAY, THE 18TH OCTOBER 2007 / 26TH ASWINA 1929

CRP. No. 2968 of 2001

OP.302/1998 of ADDL. DISTRICT COURT, THALASSERY
.....

REVN. PETITIONER/ RESPONDENT:

K.S.E. BOARD, TRIVANDRUM REP. BY ITS CHAIRMAN.

BY ADV. SRI. A. SUDHI VASUDEVAN, SC, KSEB
SRI. C.K. KARUNAKARAN, SC FOR KSEB

RESPONDENT/ PETITIONER:

C.P. PURUSHOTHAMAN,
AGRICULTURIST,
KALLADATH HOUSE,
ANJARAKANDY AMSOM,
MAMBA DESOM, MUZHAPPALA. P.O.

BY ADV. SRI.GRASHIOUS KURIAKOSE

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 18/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

CRP. No. 2968/2001

Order on C.M.P. No. 1167/2003 in CRP No. 2968/2001

Dismissed

18.10.2007 **Sd/- P.R.RAMAN, JUDGE.**

// True Copy //

P.A. to Judge.

jg

P.R.RAMAN, J.

C.R.P. No. 2968 of 2001

Dated, this the 18th day of October, 2007

O R D E R

This Civil Revision Petition is filed by the Kerala State Electricity Board challenging the order passed by the District Judge, Thalassery in OP No.302/1998 dated 13/03/2000. For drawing an electric line through respondent's property, certain trees standing in his property were cut and removed and compensation was awarded by the Board for the same. Dissatisfying the same, the respondent preferred an OP before the District Court for claiming enhancement. The only point raised in the revision is as to whether the real rate of interest is at 5% return. The court below fixed 5% as annuity, the real rate of interest, followed by a Larger Bench decision of this Court. But the apex court in **KSEB Vs. Livisha,** reported in 2007 (3) KLT 1 considered the decision of the 5 Judge Bench of this Court among the other decisions and held that –

> "The situs of the land, distance between the high voltage electricity line laid thereover, the extent of the line thereon as also the fact as to whether the high voltage line passes over a small track of the land through the middle of the land or other similar relevant factors in our opinion would be determinative. The value of the land would also be a relevant factor. The

owner of the land furthermore, in a given situation may lose his substantive right to use the property for the purpose for which the same was meant to be used.

So far as the compensation in relation to fruit bearing trees are concerned the same would also depend upon the facts and circumstances of each case."

2. The apex court after reference to various decisions in the point opined that the consideration being depend upon several such factors may not be uniform and the factual situation obtaining in a particular case is to be taken note of in deciding the issue. Therefore, in the light of the apex court decision, a flat rate of 5% may not be justified in all cases, whether or not in the particular case 5% should be granted or a lesser percentage should be granted, will thereafter depend upon the various factors as noticed above. The court below did not examine the matter with reference to the factual matrix, but the court below could not be found fault with, since this is a case where neither parties have adduced any evidence for entering a satisfactory findings on the various issues as noticed above. Possibly, the parties, having thought that 5% will be the real rate as held by this Court, did not adduce further evidence in the matter. In the above circumstances, the order passed by the

court below is set aside and the matter is remanded to the court below for fresh consideration in accordance with law. Both the sides will be given an opportunity to adduce evidence in various factors, which should be considered, in deciding the rate of percentage of annuity needs to be fixed in this case and dispose of the matter thereafter in accordance with law.

Both parties shall appear before the court below on 10/12/2007.

(P.R.RAMAN, JUDGE.)

jg